



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 02 2017

REPLY TO THE ATTENTION OF:
WC-15J

CERTIFIED MAIL 7009 1680 0000 7660 9685
RETURN RECEIPT REQUESTED

Ex. 6 (Personal Privacy)

Ex. 6 (Personal Privacy)

Ex. 6 (Personal Privacy) Farm

Ex. 6 (Personal Privacy)

Subject: Administrative Order on Consent for Compliance Pursuant to 33 U.S.C. §§ 1318 and 1319(a)
Docket No. V-W-17-AO-02

Dear Ex. 6 (Personal Privacy):

Enclosed you will find the final Administrative Order on Consent (Agreement) to mitigate potential violations of Section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311, that the U.S. Environmental Protection Agency discovered at the Ex. 6 (Personal Privacy) Farm facility in Lake Geneva, Wisconsin.

As you know, the EPA inspected your facility on November 17, 2015 and March 24, 2016. At the time of the inspection, EPA identified potential CWA violations. During the negotiations for the Agreement, you discussed with EPA, both interim and permanent measures to prevent manure and process wastewater from reaching the waterway south of the facility. You also provided timelines whereby these measures would be installed and agreed to utilize technology to assist the EPA to perform virtual site visits.

The Agreement negotiated with you outlines the remaining compliance measures to permanently capture all manure and process wastewater from operations at your facility. Protecting water quality is a high priority of EPA. Pollutants such as excessive nutrients and pathogens discharged to waterways from animal feeding operations contribute to poor water quality and impairment of uses of those waterways.

If you have any questions or concerns, please contact Joan Rogers, at (312) 886-2785 or rogers.joan@epa.gov, or your legal counsel may contact Jeffrey Cahn, Associate Regional Counsel, at (312) 886-6670 or cahn.jeff@epa.gov.

Sincerely,



Christopher Korleski
Director, Water Division

Enclosure

cc: Thomas Bauman, Wisconsin Department of Natural Resources
Mary Anne Lowndes, Wisconsin Department of Natural Resources
Ben Benninghoff, Wisconsin Department of Natural Resources
Mike Gilbertson, Wisconsin Department of Natural Resources
Lisa Creegan, Wisconsin Department of Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Ex. 6 (Personal Privacy)

Farm

Ex. 6 (Personal Privacy)

Respondent

)
) **CONSENT ORDER FOR**
) **COMPLIANCE UNDER SECTIONS**
) **308 and 309 OF THE**
) **CLEAN WATER ACT**
)
) **DOCKET NO. V-W-17-AO-02**

I. INTRODUCTION

1. The U.S. Environmental Protection Agency (EPA) and Brennan Farm (Respondent) enter voluntarily into this Consent Order (Order) pursuant to Sections 308(a) and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318(a) and 1319(a).
2. The Administrator of EPA has delegated the authority to issue such orders to the Regional Administrator of EPA, Region 5, who has re-delegated this authority to the Director of the Water Division, EPA, Region 5.

II. STATUTORY BACKGROUND

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants to the waters of the United States by any person except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
4. Pursuant to the CWA and EPA regulations, the owner or operator of a concentrated animal feeding operation (CAFO) which discharges any manure, litter, or process wastewater to the waters of the United States must obtain an NPDES permit. Section 402 of the CWA, 33 U.S.C. § 1342; 40 C.F.R. § 122.23(a) and (b).
5. Pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), whenever the Administrator of EPA finds a person in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the Administrator of EPA may issue an order requiring that person to comply with the provisions of the CWA and the requirements of the permit.
6. Pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), EPA may require the owner or operator of any point source to establish and maintain records; make reports; install, use, or maintain monitoring equipment or methods; sample effluents; and provide other information as may be reasonably required to carry out the objectives of the CWA.

7. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES by which the Administrator may issue permits for the discharge of pollutants to the waters of the United States subject to certain conditions.
8. EPA has approved the State of Wisconsin to issue NPDES permits under Section 402(b) of the CWA, 33 U.S.C. § 1342(b). The Wisconsin Department of Natural Resources (WDNR) is the NPDES permitting authority for the State of Wisconsin. WDNR refers to the NPDES permits that it issues as Wisconsin Pollutant Discharge Elimination System (WPDES) permits. EPA retains the authority to enforce the CWA in Wisconsin.

III. DEFINITIONS

9. All terms used but not defined in this Order shall have the meanings provided to them in the CWA and EPA regulations promulgated under the CWA.
10. "Animal feeding operation" or "AFO" means, among other things, "a lot or facility where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility." 40 C.F.R. § 122.23(b)(1).
11. "Compliance Plan" and "Compliance Schedule" mean the plan and schedule described in and required by Section VI.A of this Order.
12. "Concentrated animal feeding operation" or "CAFO" means, among other things an AFO that is defined as a Large CAFO or as a Medium CAFO under federal regulations. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. 40 C.F.R. § 122.23(b)(2).
13. "Discharge" or "discharge of a pollutant" means, among other things, any addition of any pollutant to navigable waters from any point source. Sections 502(12), (16) of the CWA, 33 U.S.C. §§ 1362(12), (16); 40 C.F.R. § 122.2.
14. "Facility or activity" means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulations under the NPDES program. 40 C.F.R. § 122.2.
15. "Manure" means "manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal." 40 C.F.R. § 122.23(b)(5).
16. "Medium CAFO" means an animal feeding operation that stables or confines as many as or more than the numbers of animals specified in the following range: 200 to 699 mature dairy cows, whether milked or dry, and either one of the following conditions is met: (A)

pollutants are discharged from the production area into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (B) pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the production area or otherwise come into direct contact with the animals confined in the operation. *See* 40 C.F.R. §§ 122.23(b)(6)(i)(A) and 122.23(b)(6)(ii)(A) and (B).

17. "Navigable waters" or "navigable waterway" means any body of water navigable under the laws of the State of Wisconsin. Wis. Stat. § 30.01(4m).
18. "Nutrient Management Plan" means the plan described in and required by Section VI.A of this Order.
19. "Overflow" means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure. 40 C.F.R. § 412.2.
20. "Person" means, among other things, an individual, association, partnership, or corporation. Section 502(5) of the CWA, 33 U.S.C. § 1362(5); 40 C.F.R. § 122.2.
21. "Point source" means, among other things, "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, ... [or] concentrated animal feeding operation ... from which pollutants are or may be discharged." Section 502(14) of the CWA, 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.
22. "Pollutant" means, among other things, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, wrecked or discarded equipment, rock, sand, cellar dirt, and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.
23. "Process wastewater" means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding. 40 C.F.R. § 122.23(b)(7).
24. "Production area" means that part of the facility that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not

limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of mortalities. 40 C.F.R. § 122.23(b)(8).

25. "Site" means the facility or facilities owned and/or operated by Respondent located at or near **Ex. 6 (Personal Privacy)**, including, but not limited to, the land application area, the production area, and adjacent land used in connection with the land application area and/or production area.
26. "Waters of the United States" means, in accordance with 40 C.F.R. § 122.2, among other things:
- a. all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce;
 - b. all interstate waters;
 - c. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters;
 - d. all impoundments of waters otherwise defined as waters of the United States under this definition; and
 - e. tributaries of waters identified in paragraphs (a) through (d) of this definition.

IV. FINDINGS

27. Respondent is a person who owns or operates a dairy cow facility located at the Site.
28. The Site is an animal feeding operation because:
- a. The Site includes lots or facilities where mature dairy (milking and/or dry) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, within the meaning of 40 C.F.R. § 122.23(b)(1)(i); and
 - b. crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of those lots or facilities, within the meaning of 40 C.F.R. § 122.23(b)(1)(ii).
29. The Site is a Medium CAFO because it stables or confines 200 to 699 mature dairy cows, whether milked or dry, and either: (A) pollutants are discharged into waters of the United

States through manmade conveyances including a pipe, a concrete pad, and a roadside ditch; or (B) pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation. 40 C.F.R. § 122.23(b)(6).

30. On November 17, 2015, personnel from EPA conducted an inspection at the Site (the 2015 Inspection). A copy of the inspection report generated by EPA as a result of the 2015 Inspection (2015 Inspection Report) is included as Attachment 1 to this Order.
31. On March 24, 2016, personnel from EPA conducted a follow-up inspection at the Site (the 2016 Inspection). A copy of the inspection report generated by EPA as a result of the 2016 Inspection (2016 Inspection Report) is included as Attachment 2 to this Order.
32. During Inspections, EPA personnel made several observations, including the following:
 - a. There was no containment for the manure and process wastewater from the barn and open pen of the Calf Barn. Runoff from this barn and open pen would flow along the ground to the south and eventually to the flow channel which joined the drainage ditch south of the production area. The drainage ditch flowed to the grassed waterway through a culvert under Highway 120. During heavy rains, there is a significant potential for pollutants to reach the West Branch of the North Branch of Nippersink Creek.
 - b. There was no containment for the manure and process wastewater from the barn and open pen of the Heifer Barn north of the Calf Barn. Runoff from this barn and open pen would flow along the ground to the south and eventually to the flow channel which joined the drainage ditch south of the production area. The drainage ditch flowed to the grassed waterway through a culvert under Highway 120. During heavy rains, there is a significant potential for pollutants to reach the West Branch of the North Branch of Nippersink Creek.
 - c. There was no containment for the manure and process wastewater from the barn and open pen on the west side of the 2000 Freestall Barn. Runoff from this barn and open pen would flow along the ground to the south and eventually to the flow channel which joined the drainage ditch south of the production area. The drainage ditch flowed to the grassed waterway through a culvert under Highway 120. During heavy rains, there is a significant potential for pollutants to reach the West Branch of the North Branch of Nippersink Creek.
 - d. There was no containment for the manure and process wastewater from the barn and open pen on the west side of the 2002 Freestall Barn. Runoff from this barn and open pen would flow along the ground to the south and eventually to the flow channel which joined the drainage ditch south of the production area. The drainage ditch flowed to the grassed waterway through a culvert under Highway 120. During heavy rains, there is a significant potential for pollutants to reach the West Branch of the North Branch of Nippersink Creek.

- e. There was no containment for the manure and process wastewater from the barn and open pen on the west side of the 2004 Freestall Barn. Runoff from this barn and open pen would flow along the ground to the south and eventually to the flow channel which joined the drainage ditch south of the production area. The drainage ditch flowed to the grassed waterway through a culvert under Highway 120. During heavy rains, there is a significant potential for pollutants to reach the West Branch of the North Branch of Nippersink Creek.
- f. There was no containment for the manure and process wastewater from the feed mixing area and any stored feed or haylage west of the 2000 Freestall Barn. Runoff from this area would flow along the ground to the south and eventually to either the flow channel or the flow pathway just to the west of the flow channel, which both join the drainage ditch south of the production area. The drainage ditch flowed to the grassed waterway through a culvert under Highway 120. During heavy rains, there is a significant potential for pollutants to reach the West Branch of the North Branch of Nippersink Creek.
- g. There was no containment for the manure and process wastewater from the calf hutch area. Runoff from the calf hutches, and from the used bedding stacked near them, would flow along the ground to the south and eventually to either the flow channel or the flow pathway just to the west of the flow channel, which both join the drainage ditch south of the production area. The drainage ditch flowed to the grassed waterway through a culvert under Highway 120. During heavy rains, there is a significant potential for pollutants to reach the West Branch of the North Branch of Nippersink Creek.
- h. There was no containment for the manure and process wastewater from the barn and open pen attached to the storage building on the west side of Highway 120. Runoff from this barn and open pen would flow to the south and eventually to the grassed waterway. During heavy rains, there is a significant potential for pollutants to reach the West Branch of the North Branch of Nippersink Creek.
- i. There was no containment for the process wastewater from the spilled feed on the ground around the grain bins on the west side of Highway 120. Runoff from of this process wastewater would flow to the south and eventually to the grassed waterway. During heavy rains, there is a significant potential for pollutants to reach the West Branch of the North Branch of Nippersink Creek.
- j. The pollutants that flow to the grassed waterway have the potential to reach the perennial stream during precipitation events via overland flow. Additionally, the presence of field tiles in the grassed waterway would allow pollutants carried by the storm water to reach the perennial stream.
- k. There was no containment for manure and process wastewater from the heifer barns and their open pens on the west side of Highway 120. Runoff from these barns and open pens would flow to the west and during heavy rains, there is a potential for pollutants to reach the West Branch of the North Branch of Nippersink Creek.

- l. There was no containment for the process wastewater from the silage stored on the Silage Pad. Runoff of process wastewater would flow to the north to a crop field.
 - m. There was track in and track out of feed and manure from the northeast barn door of the 2010 Freestall Barn. Runoff of process wastewater would flow to the north to a crop field.
33. A grassed waterway on the west side of Highway 120 conveys flow to the West Branch of the North Branch of Nippersink Creek. The flow in this perennial stream is to the north and to the perennial North Branch of the Nippersink Creek. From there, flow goes to the east and south to the Fox River.
 34. The West Branch of the North Branch of Nippersink Creek, North Branch of the Nippersink Creek and the Fox River are each navigable waters and waters of the United States. The Fox River is a traditional navigable water.
 35. The Nippersink Creek in Illinois is listed on the 303d list as impaired based on fecal coliforms.
 36. The Site is a point source.
 37. EPA believes the runoff pathways described in Paragraph 32 are contributing to a discharge of pollutants.
 38. As a CAFO which EPA believes discharges pollutants into the waters of the United States, the Site is subject to the NPDES permitting requirements of Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.
 39. By discharging pollutants from the Site without an NPDES permit, EPA believes Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

V. CONSENT ORDER

40. It is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order, including the following Compliance Requirements.

VI. COMPLIANCE REQUIREMENTS

A. Permanent and Interim Measures

41. Upon the effective date of this Order, Respondent shall cease all unpermitted discharges from the Site.

42. Within thirty (30) calendar days of the effective date of this Order, Respondent shall develop and submit to EPA and WDNR for approval a Compliance Plan which describes in detail the actions to be taken by Respondent to permanently remedy all discharges from the Site. The Compliance Plan shall require Respondent to notify EPA upon completion of major actions undertaken pursuant to the Compliance Plan. The Compliance Plan shall also include a Compliance Schedule which shall not exceed two hundred and seventy (270) days from the effective date of this Order.
43. After receipt and review of Respondent's Compliance Plan as required by this Order, EPA shall notify Respondent whether the Compliance Plan and the Compliance Schedule are acceptable by EPA. Once approved by EPA, the Compliance Plan and Compliance Schedule shall be fully incorporated into and made an enforceable part of this Order. Upon receipt of EPA's written approval, Respondent shall commence work in accordance with the schedule and provisions contained therein.
44. The Compliance Plan and Compliance Schedule shall include a provision for an updated Nutrient Management Plan that reflects the actions to be taken by Respondent to permanently remedy all discharges from the Site, and that:
- a. ensures adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
 - b. ensures that mortalities (*i.e.*, dead animals) are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat mortalities;
 - c. ensures that clean water is diverted, as appropriate, from the production area;
 - d. prevents direct contact of confined animals with waters of the United States;
 - e. ensures that chemical wastes and other non-livestock wastes handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless such system is specifically designed to treat such chemicals and other contaminants;
 - f. identifies site-specific conservation practices to be implemented, including, as appropriate, buffers, or equivalent practices, to control discharges of manure, litter, or process wastewater to waters of the United States;
 - g. identifies protocols for appropriate testing of manure, litter, process wastewater, and soil;

- h. establishes protocols to land apply manure, litter, and process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater;
 - i. identifies specific records that will be maintained to document the implementation and management of the requirements of the Order;
 - j. defines the total number of acres for land application covered by the Nutrient Management Plan;
 - k. describes the total number of acres under the control of Respondent that were used for land application of manure, litter, and process wastewater in the last 12 months; and
 - l. includes a summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including the date, time, and approximate volume of such discharges.
45. Upon the effective date of this Order, Respondent shall put into place interim measures to ensure that there are no unpermitted discharges while the Compliance Plan is being developed, reviewed, and implemented.
46. Within thirty (30) calendar days after the effective date of this Order, Respondent shall submit to EPA written documentation (e.g. as-built, photographs, affidavits, costs, etc.) concerning the interim measures implemented according to this Order, showing that Respondent completed installation of the interim measures.

B. Discharge Minimization and Notification

47. Within thirty (30) calendar days of the effective date of this Order, Respondent shall post at the Site, a summary of procedures to effectively respond to any spill or discharge to waters of the United States, and shall ensure that all employees are aware of and follow those procedures. The posted procedures shall contain detailed response and instructions which shall include, but not be limited to, the names of the officials to be notified, State and Federal Agencies to be notified, local or downstream public water supply and public health entities to be notified, appropriate phone numbers, addresses, safety precautions, and immediate actions to abate the occurrence.
48. This Order does not authorize Respondent to discharge pollutants to waters of the United States at or from the Site, and any such discharges are subject to enforcement. Upon the effective date of this Order and until Respondent receives notification from EPA that they have satisfied all requirements of this Order, if for any reason Respondent discharges pollutants to waters of the United States, Respondent must visually monitor the discharge and immediately notify EPA by contacting Joan Rogers by telephone (312) 886-27853, and by e-mail rogers.joan@epa.gov. Respondent must also immediately notify WDNR's 24-hour spill emergency hotline at 1-800-943-0003. In addition, Respondent must document the following

information and submit a written report to EPA and WDNR within five (5) calendar days of becoming aware of the discharge, including:

- a. the cause of the discharge, including an estimate of the discharge volume, an estimate of the flow rate if the discharge is continuing and any analytical data;
- b. the area receiving the discharge (*i.e.*, field, ditch, stream, or other description);
- c. the specific location of the discharge;
- d. the period of discharge, including exact beginning and end dates and times, and if not corrected, the anticipated time the discharge is expected to continue;
- e. steps taken or to be taken to respond to, contain and mitigate the discharge;
- f. corrective action taken to prevent recurrence of the discharge; and
- g. apparent impacts to health or the environment resulting from the discharge, including, but not limited to, threats to surface water supplies, waters supply wells, recreational areas, and water quality.

C. Record Retention and Reporting

49. Upon the effective date of this Order, Respondent shall maintain at the Site and make available to EPA and WDNR personnel upon request a complete copy of the Nutrient Management Plan and copies of all records identified by the Nutrient Management Plan.
50. Respondent shall submit an annual report to EPA and WDNR no later than March 15 of each calendar year following the effective date of the Order. In each annual report, Respondent shall include the following information for the calendar year prior to submittal of the annual report.
 - a. The number and type of animals, whether in open confinement or housed under roof;
 - b. Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
 - c. Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months;
 - d. Total number of acres for land application covered by the Nutrient Management Plan developed in accordance with 40 C.F.R. § 122.42(e)(1);
 - e. Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;

- f. Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time and approximate volume; and
- g. A statement indicating whether the current version of the CAFO's Nutrient Management Plan was developed and approved by a certified nutrient management crop planner; and
- h. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with 40 C.F.R. § 122.42(e)(5)(i)(B) and 40 C.F.R. § 122.42 (e)(5)(ii)(D) and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with 40 C.F.R. § 122.42(e)(5)(ii), the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months; the data used in calculations in accordance with 40 C.F.R. § 122.42(e)(5)(ii)(D) and the amount of supplemental fertilizer applied during the previous 12 months.

VII. SUBMITTALS AND ACCESS TO INFORMATION

A. Submittals

51. Any documents or notifications required by this Order shall be submitted to EPA by Respondent to the following address:

U.S. Environmental Protection Agency, Region 5
Water Enforcement Compliance Assurance Branch (WC-15J)
Attn: Joan Rogers
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

52. Any documents or notifications required by this Order shall be submitted to WDNR by Respondent to the following address:

Wisconsin Department of Natural Resources
Attention: Thomas Bauman
Agricultural Runoff Program
WT/3, 101 South Webster Street
PO Box 7921
Madison, Wisconsin 53707

53. All submittals made pursuant to this Order shall be returned under an authorized signature containing the following certifications:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, including the possibility of fines and imprisonment for knowing violations.

54. If the signatory at any time after submittal of information finds that any portion of the submittal is false or incorrect, the signatory shall notify EPA immediately. Knowing submittal of false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 309 (c) of the CWA, 33 U.S.C. § 1319(c), and 18 U.S.C. §§ 1001 and 1341.

B. Access to Information

55. Respondent shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to sampling, analysis, chain of custody records, manifests, receipts, reports, sample traffic routing correspondence, or other documents or information related to this Order. Respondent shall also make available to U.S. EPA, for purpose of investigations, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning activities conducted pursuant to this Order.
56. When requested, Respondent will cooperate with EPA to utilize technology to perform virtual Site visits. All technology components will be provided to Respondent by EPA in order to virtually assess conditions at the Site or evaluate efficacy of installed measures.

C. Confidentiality of Submissions

57. Respondent may not withhold information because of a claim of confidentiality. However, pursuant to 40 C.F.R. Part 2, Subpart B, Respondent may assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order, as provided in 40 C.F.R. § 2.203(b). Effluent data (as defined by 40 C.F.R. § 2.302(a)(2)) and information in NPDES permit applications is not entitled to confidential treatment 40 C.F.R. § 122.7. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or

information evidencing conditions at or around the Site. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R Part 2, Subpart B.

- 58. If Respondent does not assert a claim of business confidentiality when Respondent submits the information, EPA may make the information available to the public without further notice.
- 59. EPA may use any information submitted in response to this Order in support of an administrative, civil, or criminal action against Respondent.

D. Site Access

- 60. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by Respondent, then Respondent shall, commencing on the Effective Date, provide EPA, WDNR, and their representatives, including contractors, access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.
- 61. Notwithstanding any provisions of this Order, EPA and WDNR retain all of their access authorities and rights, including enforcement authorities related thereto, under the CWA and any other applicable statutes or regulations.

E. Certification of Completion

- 62. Within thirty (30) days after Respondent concludes that it has complied with all requirements of this Order, Respondent shall submit to EPA a written certification of completion describing all actions taken to comply with the requirements of this Order.
- 63. After receipt and review of Respondent's certification submitted pursuant to all requirements of this Order, EPA may notify Respondent whether all requirements of this Order have been satisfied.
- 64. This Order shall be effective until EPA notifies Respondent that Respondent has complied with all requirements of this Order.

VIII. GENERAL PROVISIONS

- 65. Respondent has had the opportunity to confer with and submit information to EPA concerning the validity and provisions of this Order.
- 66. EPA and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Order, the validity of the findings of facts, conclusions of law, and determinations (Findings) in this Order.

67. Respondent agrees to comply with and be bound by the terms of this Order and further agrees that Respondent will not contest the basis or validity of this Order or its terms.
68. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
69. Respondent reserves the right to contest any future enforcement activity by EPA against Respondent, including, but not limited to, any future enforcement activity relating to any future discharge or to alleged noncompliance with this Order.
70. This Order applies to and is binding upon EPA and Respondent and Respondent's successors and assignees. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order. Respondent must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice to the entity to whom ownership is being transferred and provide to EPA the legal name and current contact information for the transferee.
71. Each party agrees to bear their own costs and attorney fees incurred as a result of this matter and Order.
72. Respondent must ensure that any contractors and subcontractors who are retained to perform work under this Agreement receive a copy with this Agreement within fourteen (14) days after the Effective Date of this Order or after the date of such retention. Respondent will be responsible for any noncompliance with this Agreement.
73. This Order is not a permit under the CWA, and does not waive or modify Respondent's ongoing obligation and responsibility to ascertain and comply with all other applicable federal, state, and local laws, regulations, ordinances, permits or licenses. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations.
74. EPA reserves all rights and remedies, legal, and equitable, available to address any violation cited in this Order, any other violation of the CWA, and to enforce this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for violations cited herein, for any other violations of the CWA committed by Respondent, or to enforce this Order.
75. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent.

76. Failure to comply with this Consent Order may subject Respondent to penalties of up to \$37,500 per day for each violation under Section 309 of the CWA, 33 U.S.C. § 1319, and 40 C.F.R. Part 19.
77. If Respondent seeks permission to deviate from any approved plan or schedule, Respondent shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving written approval from EPA.
78. No informal advice, guidance, suggestion, or comment by EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

IX. EFFECTIVE DATE

79. This Order shall be effective upon the date that this Order is signed by the Director of the Water Division, EPA, Region 5.

ADMINISTRATIVE CONSENT ORDER

In the Matter of ^{Ex. 6 (Personal Privacy)} Farm
Docket No. V-W-17-AO-02

This undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Order and to bind the party he/she represents to this document.

Agreed this 4 day of Feb, 2017.

For Respondent

Ex. 6 (Personal Privacy)

B

Title: member

Ex. 6 (Personal Privacy)

By: 0

Title: member

It is ORDERED and Agreed this 2nd day of March, 2017.

By: Ch. Korleski

Christopher Korleski
Director, Water Division
United States Environmental Protection Agency
Region 5